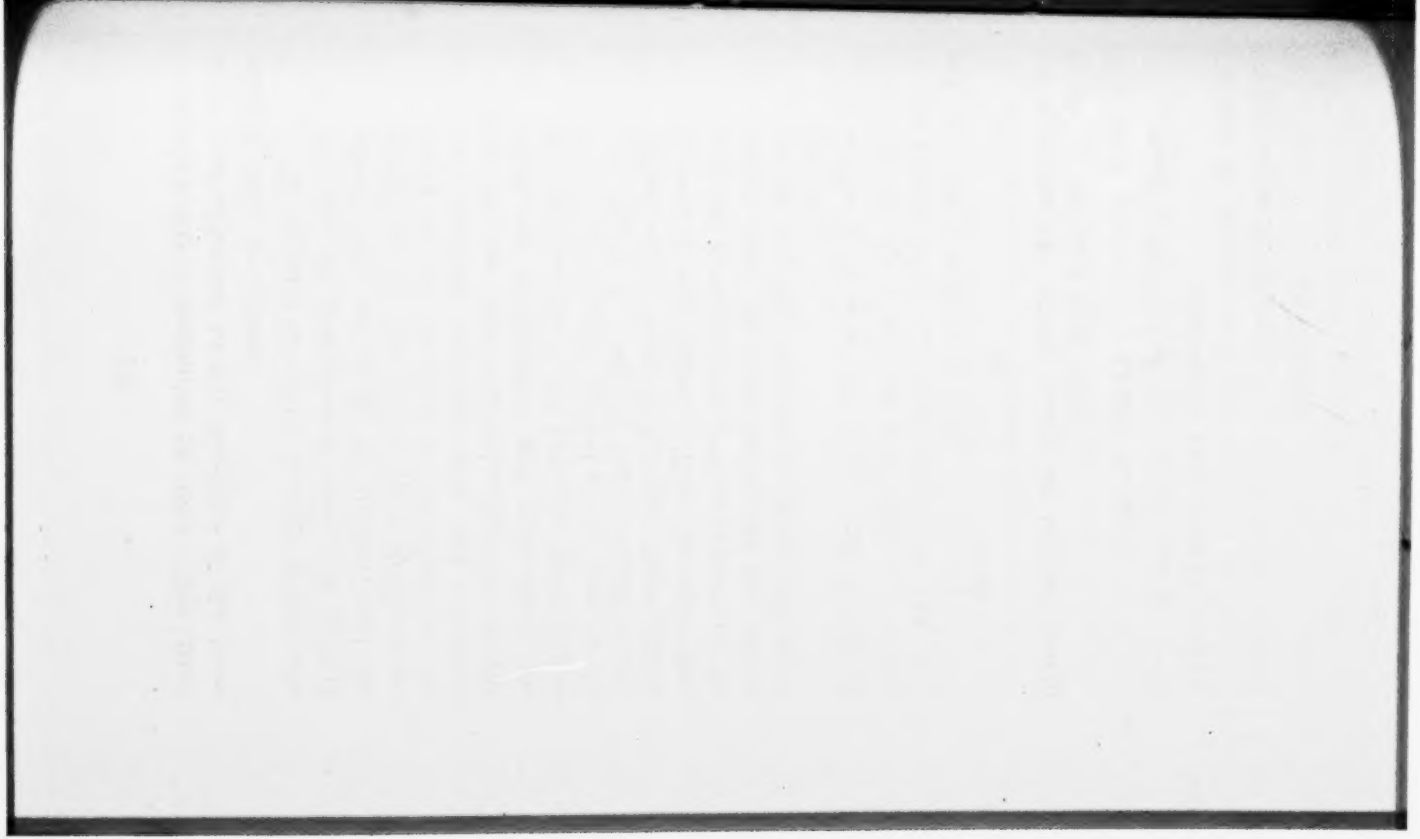

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In the Supreme Court of the United States.

OCTOBER TERM, 1921

THE UNITED STATES OF AMERICA,
ex rel JOHN W. FRENCH,
Plaintiff in Error,
vs.
JOHN W. WEEKS, SECRETARY OF WAR,
Defendant in Error.
No. 724.

THE UNITED STATES OF AMERICA,
ex rel WILLIAM F. CREARY,
Plaintiff in Error,
vs.
JOHN W. WEEKS, SECRETARY OF WAR,
Defendant in Error.
No. 725.

BRIEF OF DANIEL WILKINSON IDDINGS, as Amicus Curiae

DAYTON, OHIO,
April 8, 1922.

PRESS OF GIBSON BROS., INC., WASHINGTON, D. C.

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STATEMENT OF THE CASE

Amicus Curiae feels more than warranted in filing this Brief from the fact that the method and plan employed to retire or oust from the Army the officers who are relators to the Plaintiffs in Error here, was a general

method and plan of action under Section 24B of the National Defense Act of June 4, 1920 (41 Stat. 759), adopted and executed as admitted by the Answer of Defendant in Error, by a former Secretary of War, the present Secretary being merely substituted here. As a result of this general method and plan so adopted and executed several hundred army officers were either *forcibly* retired, or ousted *without honor*. These officers and their families, as well as officers still in the service, anxiously await the outcome of these cases.

We have had a recent revision of Army Court Martial procedure, and so fair are the general results of trials thereunder, that it seems unthinkable that a new vehicle of terror and despotism should be licensed under Sec. 24-b of the Act aforesaid, to accomplish thus by indirection what cannot, and doubtless never could, have been done by direction, to-wit: by court martial and full hearing.

In addition to the general interest thus disclosed in these cases, Amicus Curiae frankly states that he represents as counsel one of these officers thus ousted without honor, the facts of whose particular case, though de hors the record, may be shortly stated, for illustrative purposes only, as an officer of over 17 years service with distinction and a very high degree of responsibility who was court-martialed on charges relating solely to his domestic affairs, and, having been acquitted on most of the specifications and charges by the court martial itself, was later *entirely exculpated* by the President on the ground of insufficient evidence. A year later, having meantime discharged his duties faithfully, he was classified, by the Board provided for in said section, in Class B, and on notification thereof, demanded and received a hearing before a Court of Inquiry. The official records there presented

over his objection to substantiate the proposed classification consisted principally of the court martial record in which he had been exculpated. The Court of Inquiry found his classification in Class B *unwarranted,* recommended his retention in the service, and so informed him. Nevertheless without any knowledge thereof, or opportunity to be heard thereby, his case went to a so-called Honest and Faithful Board, which found his classification aforesaid as due to "neglect, misconduct and avoidable habits," and thereafter his "discharge from the Army *by direction of the President*" for these causes (enumerated) under the foregoing section, was announced by the Chief of Staff in Special Orders of the War Department. Receipt of copy of such Special Orders was his first knowledge that the favorable action of his Court of Inquiry had been ignored, and still later he discovered through his counsel then employed that the President had never personally considered his case, although the President personally had a year previous favorably acted on substantially the same official record developed in his court martial trial. It is evident that this officer was ousted without honor under said Section 24-B for the same alleged offenses as resulted in his exculpation and retention in service under court martial proceedings.

Section 24-B, whose construction is alone involved in these cases, having been quoted in full in Brief of Plaintiffs in Error, page 2, is not again set out here.

Amicus Curiae therefore reasserts that on account of this general interest and of the foregoing illustrative case in particular, he was more than warranted in securing the indulgent permission of counsel of record and of this Honorable Court to file this Brief.

ARGUMENT.

Authorities need not be cited to the effect that the statute under consideration is entitled to liberal construction in its operation upon any officer subject to its provisions, and to the corrolary that it must be strictly construed against the Government attempting to utilize its provisions.

Another sound rule of statutory construction is that a given statute must be taken from its "four corners," like a will, to determine its real meaning.

With these rules applied to the instant statute, Amicus Curiae makes bold his claim that liberally construed in favor of any officer and strictly construed against the Government this statute taken from its "four corners" provides only a new and supplementary means or method of court martial, which, although evidently contemplating wholesale action and results, is fully safeguarded internally by several courts therein mentioned, with *revision power* in the President himself, who is the *convening authority,* at least of the Final Classification Board, the primary tribunal provided.

It is evident from the Congressional Record (quoted at page 16 of the Brief of Plaintiffs in Error) that Congress had this idea of the meaning of the statute when it enacted it,—there was no "idea of setting up any star chamber proceedings whatever." And yet that is exactly what the record shows has been done in these cases.

Not only has the "star-chamber" or secret plan of proceeding been adopted and executed by the former Secretary of War himself in the instant cases, but all semblance of judicial inquiry has been ignored. Worse still, though, and the crux of the illegality complained of, has been the absolute denial of the right of final revision by the Presi-

dent, conferred by the express words of the statute. The President of the United States never saw the record of the proceedings in these cases. Therefore he could make no "order" for "further revision." Relators never knew where they stood until the Special Orders came, *forcibly* retiring the one, and ousting the other *without honor*. It was then too late. How could they have personally sought "revision" by the President?

Relators had no due process, nor hearings before the Final Classification Board, the Honest and Faithful Board, or the President himself, as their Commander-in-Chief, and the convening authority.

The only court open to them was the Court of Inquiry, apparently, as permitted to function, merely a recommendatory tribunal, a court in name only, placed intermediately, but utilized in the plan of procedure of the former War Secretary, to furnish merely some semblance of judicial background to the whole proceedings, though in truth and in fact a farce and a sham.

As applicable here, Amicus Curiae stands squarely on the principles long ago enunciated in the Runkle Case (122 U. S. 543) cited in Brief of Plaintiffs in Error.

The power to retire or discharge officers from the Army under said Section 24-B of the National Defense Act is a judicial power, reposing finally in the President himself with preliminary hearings by the courts provided by the statute, of which he is convening authority.

The President could not delegate such authority of *revision* as the Statute gave him, and therefore the action of the former War Secretary approving the actions of the Boards, and retiring and dismissing relators, even though under general instructions from the President, was null and void.

In this view Amicus Curiae, although of the abounding belief that due process and hearings are essential to the validity of proceedings before the Final Classification and Honest and Faithful Boards, is content to defer to the Argument on these Points of the Brief of Plaintiffs in Error.

Mandamus is not asked against the President of the United States in these cases. Mandamus is asked against the Secretary of War, unfortunately, due to the vicissitudes of politics and resultant change of such officers, now a gentleman who had no part in these cases.

That such Secretaries who exercise arbitrary power and exceed their authority may be compelled by mandamus to restore the status of aggrieved parties is well settled. Garfield *v.* United States ex rel Goldsby, 211 U. S. 249.

It is therefore respectfully submitted that the judgment of the Court of Appeals should be reversed with directions to that court to enter judgment affirming the judgment of the Supreme Court of the District of Columbia.

DANIEL WILKINSON IDDINGS,
as Amicus Curiae.

DAYTON, OHIO,
April 8, 1922.